

IN THE COURT OF THE
CHIEF JUDICIAL MAGISTRATE ::BAKSA.

G.R. Case No. 28 of 2018

Under Section 279/304(A) IPC

Present :-Smti. D. Boro, AJS,
Chief Judicial Magistrate, Baksa.

The State of AssamProsecution.

-Vs-

Plato Boro.....Accused Person.

Evidence recorded on : - 20-12-2016, 08-10-2018,
18-06-2019, 04-10-2019,
04-08-2022.

Argument heard on : - 14-09-2022.

Judgment delivered on : - 14-09-2022.

Advocate Appeared :-

Mr. **Ranjit Basumatary**, A.P.P. for the State of Assam.

Mrs. **Ajanta Rabha**, Advocate for the accused person.

J U D G M E N T

1. The prosecution story in brief is that on 07-01-2013 informant TV Raghu Pathi of 20 Madras Regiment, C/o. 99 APO lodged an FIR before OC, Tamulpur PS to the effect that on the same day

vehicle No. 08D178332P came to Army Camp at Tamulpur to perform Military duty and it reported duty in the Army Camp at 6 PM. The said vehicle was parked on left side of the road with parking lights on at Tamulpur-Rangia road in front of 107 Mountain Bridge Headquarter. At around 6.05 PM a motor cycle with two persons without helmet came and hit the said Army vehicle from behind. One person died on the spot and the other person was injured.

2. Police registered a case against the accused person u/s 279/304(A)/338 IPC and after completion of investigation submitted charge-sheet against accused Plato Boro u/s 279/304(A) IPC.
3. Substances of accusation u/s 279/304(A) IPC are read over and explained to the accused person to which the accused person pleaded not guilty and claimed to be tried.
4. The prosecution examined 7 (seven) nos. of witnesses.
5. The accused person is examined u/s 313 Cr.P.C. The accused declined to adduce evidence.
6. I have heard argument of the learned Asst. P.P. as well as the learned defence counsel and perused all the relevant documents available on record.

7. POINTS FOR DETERMINATION:

- 1) Whether the accused person had driven bike bearing no. AS28-1804 on the public way so rashly or negligently likely to cause hurt or injury to any other person?
- 2) Whether Amar Boro had died?

3) Whether the accused person had caused death of Amar Boro by doing any rash or negligent act not amounting to culpable homicide?

8. DISCUSSIONS, REASONS & DECISION THEREFOR-

9. Point No.1, 2 & 3:

- 10.** PW1 Dipak Kalita said that about 3/4 years ago in the evening while he was coming from home saw one army vehicle parked on the side of the road and one bike on the side of the army vehicle and two boys were laying there. One boy died on the spot and the other boy was taken to medical. The army vehicle and the bike were on the left side of the road.
- 11.** In cross-examination, PW1 said that he does not know who drove the vehicle and for whose fault, the accident took place.
- 12.** PW2 Rupjyoti Deka said that one day at around 6.30 PM in 2013 he was going home from chowk. Then he saw one army vehicle standing at the army check post and one bike by the side of the army vehicle and two boys were laying there. One boy died on the spot and the other boy was taken to hospital.
- 13.** In cross-examination, PW2 said that he does not know how the incident took place.
- 14.** PW3 Bhagaban Kalita said that in 2013, one day he was coming pulling thela and saw gathering of people near army camp. He further saw a person laying on the road and one vehicle was standing there. He does not know what happened to death person.

- 15.** PW4 Nagen Rajbongshi said that in 2013, one day at about 7 PM while he was returning, he found people gathering near MES, Barghapa. He learnt from other people that an accident took place some time ago and the injured was taken to hospital.
- 16.** PW5 Deben Ch. Boro said that one 07-01-2013, at about 6.50 PM his son/accused met with an accident at Tamulpur. He does not know how and why the accident took place. Later on, police seized the motor cycle of his son in his present. Ext.1 and Ext.2 are seizure list.
- 17.** PW6 Dharmeswar Brahma said that in 2013, in the one evening there was a road accident in which one army vehicle and motor cycle of the accused was involved. He went to the place of occurrence which is just in front of Tamulpur army camp. The accused was injured in that accident and he was taken to hospital on 108 Ambulance.
- 18.** From the available evidence, we can see that one road accident took place between one army vehicle and a motor cycle. The army vehicle was parked and the motor cycle hit the army vehicle from behind. There were two riders on the motor cycle and one of them died on the spot. Though the name of the rider who died on the spot is not available in the evidence, but from the post-mortem report, we can see that the name of deceased was Amar Boro.
- 19.** There is nothing to disbelieve that Amar Boro died in the vehicular accident. The date of the alleged occurrence is 07-01-

2013 and time is 06.05 PM. In the month of January, usually it becomes complete dark by 6 PM. It is alleged that the bike hit the army vehicle from behind when the army vehicle was parked by the side of the road with parking lights on. There may be many reasons for which a bike may hit a standing vehicle from back side. The standing vehicle may not have indicator light on or light of vehicles coming from the front side may disturb the rider in detecting any vehicle parked by the side of the road. As a result, the biker may hit the standing army vehicle from behind. There is no evidence of any rash or negligence on the part of the accused in causing the accident. In fact, there is no evidence that the accused was driving the offending motor cycle at the relevant time.

20. As such, from the above discussions, I find that it is proved that Amar Boro had died. But, it is not proved that the accused person had driven bike bearing no. AS28-1804 on the public way so rashly or negligently likely to cause hurt or injury to any other person **AND** the accused person had caused death of Amar Boro by doing any rash or negligent act not amounting to culpable homicide. So, the accused cannot be held guilty u/s 279/304(A) IPC.

21. From the above discussions, I am of the considered opinion that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt u/s 279/304(A) IPC. So, I acquit accused Plato Boro of the charges u/s 279/304(A) IPC and is set at liberty.

- 22.** The custody of the articles vide MR No.26/13 Zimma No. 13/13, MR No.95/13 Zimma No.13/13 and MR No. 94/13 Zimma No. 32/13 is made absolute.
- 23.** Bail bond furnished u/s 437(A) Cr.PC. shall remain in force upto six months from today.
- 24.** Given under my hand and seal of this Court this 14th day of September, 2022.

Typed by me—

D. Boro
Chief Judicial Magistrate
Baksa

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Chief Judicial Magistrate
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APPENDIX

PROSECUTION EXHIBITS:

Ext.1 & Ext.2-	Seizure list.
Ext.3-	FIR.
Ext.4 & Ext.5-	MVI Report.
Ext.6-	PM Report.
Ext.7-	Sketch map.
Ext.8-	Charge sheet.

DEFENCE EXHIBITS: NIL.

EXHIBITS PRODUCED BY WITNESSES: NIL.

COURT EXHIBITS: NIL.

PROSECUTION WITNESSES :

PW1-	Dipak Kalita.
PW2-	Rupjyoti Deka.
PW3-	Bhagaban Kalita.
PW4-	Nagen Rajbgonshi.
PW5-	Deben Ch. Boro.
PW6-	Dharmeswar Brahma.
PW7-	Munin Choudhury (IO).

DEFENCE WITNESSES : NIL

COURT WITNESSES: NIL.